

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

MONSANTO COMPANY and )  
MONSANTO TECHNOLOGY LLC, )  
Plaintiffs, )  
vs. )  
E.I. DUPONT DE NEMOURS AND ) Case No. 4:09-cv-00686-ERW  
COMPANY and )  
PIONEER HI-BRED INTERNATIONAL, )  
INC., )  
Defendants. )

**MOTION FOR SANCTIONS FOR DISCOVERY ABUSE**

Plaintiffs, Monsanto Company and Monsanto Technology LLC (collectively “Monsanto”), respectfully move this Court for the entry of an order sanctioning Defendants, E.I. du Pont de Nemours and Company (“DuPont”) and Pioneer Hi-Bred International, Inc. (“Pioneer”) (collectively “Defendants”), for improper conduct by Defendants’ counsel during the taking of depositions of fact witnesses presently or formerly employed by or affiliated with one or both of Defendants. Numerous depositions have been scheduled over the next three weeks, and resolution of Monsanto’s Motion will directly impact on Monsanto’s ability to timely take and complete fact depositions. Monsanto believes oral argument will provide assistance to the Court in ruling on Monsanto’s Motion. This Court has recently set oral argument on Defendants’ Second Motion to Compel (Dkt. 493) for January 19, 2011. Monsanto respectfully requests that oral argument on Monsanto’s Motion for Sanctions take place on this same date.

In support of this Motion, Monsanto incorporates by reference its Memorandum of Points and Authorities and the Declaration of Stephen R. Smerek with Exhibits A, A-1, B and C thereto, as if fully stated herein.

WHEREFORE, Monsanto respectfully requests the Court grant Monsanto's Motion for Sanctions for Discovery Abuse, and enter an Order as follows to prevent further abuse of the discovery process by Defendants' counsel:

1. Instruct Defendants' counsel not to make speaking objections. All objections should be limited to saying "objection" and stating the short form basis for the objection (e.g., lack of foundation; vagueness; etc.). Any objection or commentary that suggests an answer or is adopted by the witness will subject counsel to further sanction.
2. Order that Defendants' counsel may not interrupt a line of questioning and may not confer with the witness (in or out of the deposition room) while a question is pending. Any such conferences will not be privileged and may subject Defendants' counsel to further sanctions. Further Order that Monsanto is permitted to question Dr. Stephens regarding the substance of his communications with defense counsel when he was pulled from the deposition by defense counsel during a pending question.
3. Order that Defendants' counsel may not invoke the attorney-client or work product privileges without foundation, and may not bar Monsanto's counsel from asking questions to establish whether or not there is a foundation for any claim of privilege or instruction not to answer.
4. Order that Dr. Stephens be produced for an additional day of deposition at the Courthouse, and that this deposition may take place within the two weeks following the close of discovery on February 7, 2011.
5. Order that Defendants be required to pay the fees and costs incurred by Monsanto in connection with the original deposition of Dr. Stephens and in bringing this motion.

Monsanto further moves for any other remedies as may be deemed appropriate by the Court.

Dated: January 12, 2011

Respectfully submitted,

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By: /s/ Joseph P. Conran.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 12th day of January, 2011, the foregoing was filed electronically with the Clerk of the Court for the United States District Court for the Eastern District of Missouri, Eastern Division, and was served by operation of that Court's electronic filing system, upon the following:

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